
Consultation published: 18 August 2016 | Closing date for comments: 13 October 2016

Individuals or organisations interested in the policy scope and public health objectives of the levy should read and comment on chapters 2 and 3. Individuals and organisations that may be directly affected by the levy or have a particular interest in the soft drinks industry should also consider responding to chapters 4 to 9 of the consultation.

2. About you

Q1 - Are you:

b) an organisation

Obesity Action Scotland is a new unit that was established in summer 2015 to provide clinical leadership and independent advocacy on preventing and reducing overweight and obesity in Scotland. It is funded by a grant from the Scottish Government and hosted by the Royal College of Physicians and Surgeons of Glasgow on behalf of the Academy of Medical Royal Colleges and Faculties. The Steering Group of Obesity Action Scotland has members across various disciplines involved in preventing and tackling obesity and its consequences e.g. clinicians, public health experts, epidemiologists, nutritionists and dieticians, GPs and weight management experts. There are four members of staff.

Within the UK we are facing an obesity epidemic that requires bold and brave action to improve our diet. We support the introduction of a Soft Drinks Industry Levy as a key first step.

Excessive free sugar consumption is contributing to the obesity crisis and must be tackled. Sugar intake in Scotland is currently 13%¹ of daily energy intake which is substantially higher than the Scottish Dietary Goal of 5%. Sugary drinks are the highest contributors to the purchase of sugar in Scotland² and we need action to reduce consumption.

Evidence suggests reducing the intake of sugar sweetened beverages (SSBs) can reduce obesity rates.³ Multiple modelling research studies demonstrate the efficacy of taxes in reducing consumption of sugary drinks, and in turn reducing overweight prevalence.^{4,5}

¹ Brown A, Capelin C, 2016. Food and Drink purchasing in Scotland from Kantar World Panel. Presentation delivered at Cross Party Group on Food, Scottish Parliament on 7th September 2016.

² FOOD STANDARDS SCOTLAND, 2016. Food and drinks purchased into the home in Scotland using data from Kantar World Panel.

http://www.foodstandards.gov.scot/sites/default/files/Food%20and%20Drinks%20Purchased%20into%20The%20Home%20in%20Scotland%20report%20-%20FINAL_0.pdf

³ Escobar, M., Veerman, J., Tollman, S., Bertram, M., and Hofman, K. (2013). 'Evidence that a tax on sugar sweetened beverages reduces the obesity rate: a meta analysis'. BMC Public Health. 13: 1073.

⁴ Collins B, Capewell S, O'Flaherty M, Timpson H, Razzaq A, Cheater S, et al. (2015) Modelling the Health Impact of an English Sugary Drinks Duty at National and Local Levels. PLoS ONE 10(6): e0130770. doi:10.1371/journal.pone.0130770

⁵ Briggs, A., et al. (2013). Overall and income specific effect on prevalence of overweight and obesity of 20% sugar sweetened drink tax in UK: econometric and comparative risk assessment modelling study. BMJ. 347:f6189

A soft drinks industry levy (SDIL) has been backed by a large number of public health organisations including the WHO, Public Health England, UK Faculty of Public Health, BMA, Obesity Health Alliance, Food Standards Scotland, and the House of Commons Health Select Committee.^{6,7,8,9} In addition, polling from March 2016 shows 69% of the public support the levy.¹⁰

Q2 - If you are in business, where is your business established?

N/A

We are an NGO based in Scotland

Q3 - If you are in business, how many staff do you employ across the UK?

N/A

Q4 - If you are a business that produces soft drinks, how much of your yearly production, in litres, would you expect to be liable for the levy?

N/A

3. Soft drinks within the scope of the levy

Q5.a - Do respondents agree that a definition of ‘added sugars’ as set out in the consultation is sufficient to capture the types of sugar commonly added to soft drinks?

No

Q5.b – If the above definition would be insufficient or could be improved, can respondents propose a suitable definition of sugar contained in UK regulations or guidance, or regulations/guidance from other jurisdictions, which would be suitable for the intentions of the soft drinks levy?

We suggest that the definition of sugar added to SSBs should be based on the definition of ‘free sugars’ used by Scientific Advisory Committee on Nutrition¹¹ (SACN) and the World Health Organization:

“Free sugars – this comprises all monosaccharides and disaccharides added to foods by the manufacturer, cook or consumer, plus sugars naturally present in honey, syrups and unsweetened fruit juices. Under this definition lactose (sugar in milk) when naturally present in milk and milk products and the sugars contained within the cellular structure of foods (particularly fruit and vegetables) are excluded.”

We would propose exemption of unsweetened fruit juice as defined in The Fruit Juices and Fruit Nectars (England) Regulations 2013, from the above definition and therefore the levy, due to its contribution to a healthy diet. Guidelines state that 150ml of unsweetened fruit juice counts as one portion of fruit and vegetables a day.¹²

⁶ World Health Organisation. (2016). ‘Report of the Commission on Ending Childhood Obesity’. http://apps.who.int/iris/bitstream/10665/204176/1/9789241510066_eng.pdf?ua=1&ua=1

⁷ Public Health England. (2015). ‘Sugar reduction: from evidence into action’.

<https://www.gov.uk/government/publications/sugar-reduction-from-evidence-into-action>

⁸ Food Standards Scotland. (2016). ‘Food Standards Scotland agrees to radical measure to tackle Scotland’s diet-related health problems’. <http://www.foodstandards.gov.scot/news/food-standards-scotland-agrees-radical-measures-tacklescotland%E2%80%99s-diet-related-health-problems>

⁹ House of Commons Health Committee. ‘Childhood obesity – brave and bold action’.

<http://www.publications.parliament.uk/pa/cm201516/cmselect/cmhealth/465/465.pdf>

¹⁰ Ipsos Mori. (2016). ‘Political monitor’. <http://www.slideshare.net/IpsosMORI/ipsos-mori-political-monitor-march-2016>

¹¹ Scientific Advisory Committee on Nutrition, 2015. Carbohydrates and Health. London: The Stationery Office.

¹² Public Health England, 2016. The Eatwell Plate.

Here, we wish to stress the importance of a fruit juice portion size of 150ml. Any volume of fruit juice over 150ml does not count as a portion of fruit or vegetables and delivers free sugars. We call for regulation to control portion sizes and ensure consistency in communicating portion size to the public.

Q5.c – Do respondents agree that the Fruit Juices and Fruit Nectars (England) Regulations 2013 provide a reasonable reference point for legislation which achieves the aim of keeping pure fruit products outside of the scope of the definition of added sugars?

No. Pure fruit products defined in Schedules 4 to 6 of the above regulations (concentrated fruit juice, water-extracted fruit juice, dehydrated fruit juice and powdered fruit juice) should be covered by the scope of the definition and therefore covered by the levy.

The definition proposed by the consultation exempts pure fruit products. However, they could be used to sweeten drinks and increase free sugar content above the thresholds of 5g and 8g/100ml. We suggest that the above ingredients should not be exempt from the levy, if they raise sugar concentration over the suggested thresholds.

Q6 – Would requiring liable producers and importers to pay the levy on cordials and dilutables at diluted volumes present reporting or compliance problems for particular businesses? If so, please provide evidence and suggest any alternative approaches.

We support the proposal to tax dilutable cordials, squash and syrups according to diluted volumes at the dilution rate recommended on packaging.

We do not foresee any reporting or compliance issues with this. If the sugar concentration of a cordial or dilutable is known, a simple calculation would give sugar concentration at diluted volume. We do not see how this simple proportion calculation could impair reporting or compliance.

Monitoring of cordial and dilutable use is important, to make sure that the consumers will not compensate for reduced sugar by using a higher volume of the cordial or dilutable.

Q7 – Respondents are invited to submit views on the treatment of liquid drinks flavourings as regards the soft drinks industry levy.

Liquid drinks flavourings should be included within the levy as they can represent a significant addition of sugar to the drink, are widely used and are very similar to dilutables and syrups.

As HMRC will issue guidance on what is considered a standard dilution ratio, we suggest using this guidance for liquid drinks flavourings as well. Alternatively, a simple investigation of usual volumes of these flavourings added to hot drinks in the main high street coffee chains would give a very good idea about most commonly used dilution ratios of this group of products.

Q8 – Do respondents agree that a minimum proportion of 75% milk is necessary to ensure that only nutrient-rich milk drinks are exempt from the levy? If not, what alternative test or treatment would you propose and why?

No.

Dairy is an important part of a healthy diet. There is a wide range of dairy products without added sugar available. However, milk-based drinks with added sugar, stabilisers and other ingredients are ultra-processed foods and do not promote healthy eating habits.

We propose that all milk-based drinks in which “free sugar” is over 5g/100ml are covered by the levy.

This will ensure that reformulation of these products to lower sugar varieties is encouraged and that there is consistency in the consumers understanding of added sugar in drinks.

This would be in line with the existing nutritional requirements of Food and Drink in Schools (Scotland) Regulations 2008. In these standards milk drinks and drinking yogurts with total sugar greater than 10g/100ml are not allowed in schools.¹³ This is based on 4.5g of sugar in each 100ml being lactose and 5g being added sugar.

Q9 – Respondents are invited to submit evidence on the composition of lactose-free and dairy-free milk substitutes, and the practical effects of including water-based drinks of this kind within the levy.

Water-based plant milk drinks should be treated in the same way as milk-based drinks and covered by the levy if free sugar concentration is over the proposed thresholds.

Including these drinks in the levy will ensure consistency of the message that adding sugar to food is not conducive to good longer-term health.

Q10 – Do respondents agree with the proposed treatment of candy sprays, ice lollies, and dissolvable powders?

We agree that ice lollies should be exempt from this particular levy.

It is our view that dissolvable powders are sold and marketed as drinks and should be treated like cordials and dilutables and the levy applied according to diluted volumes.

We believe candy sprays should be included in the levy. They contain a similar ingredient composition as sweetened soft drinks but frequently with significant added sugar content. It is a liquid product and they are often branded as popular sugar sweetened drinks. For example there are products where the candy spray contains 31grams of sugar in a single serving¹⁴ which is three times more sugar than when the same product is sold in a bottle¹⁵ with a similar ingredient profile.

We are concerned that allowing them to be sold and marketed as confectionery is misleading and allowing brand loyalty to be developed with children.

Q11 – We seek evidence and views from respondents on the types of added-sugar low alcohol products that may be captured by the levy, and the appropriate approach to these products in the levy legislation.

We believe that the levy should apply to these products, just as to soft drinks, as there is no age restriction on their purchase.

If they were not covered by the levy, an inconsistent message would likely be given that they are somewhat healthier than the products covered by the levy.

¹³ Healthy Eating in Schools A Guide to Implementing the nutritional requirements for the food and drink in schools (Scotland) regulations 2008. Accessed at <http://www.gov.scot/Resource/Doc/238187/0065394.pdf>

¹⁴ Vimto double candy spray. Information taken from <http://www.vimto.co.uk/novelty.aspx#candyspray>

¹⁵ Vimto original still. Information taken from <http://www.vimto.co.uk/still.aspx#vimtoOriginal>

Q12 – We welcome views of health professionals and organisations in identifying whether there are any other criteria for deciding whether a particular soft drink should be out of scope of the levy for medical reasons.

We agree that the products licensed for a specific medicinal use in the UK should be excluded from the levy under the condition that their consumption will be monitored for abuse of the levy. Should such abuse be noted, such products should be covered by the levy in the future.

Q13 - Respondents are invited to submit any evidence that the final levy design could have potentially adverse impacts on groups with protected characteristics.

None. We are not aware of any such evidence.

4. Liability of the levy

Q14 – Do you agree that making the packager or bottler liable for payment of the levy is the least burdensome option for producers of soft drinks? If not, which option is preferable?

N/A

Q15 – What is the best way of ensuring that small producers who contract out the manufacture of their products to a larger entity can benefit from the small operator relief/exclusion?

N/A

Q16 – What are the expected one-off and on-going costs for producers acting as a contract packager or bottler who may be required to:

- conduct due diligence that a small producer is underneath the threshold
- inform HMRC of this through their return
- Maintain and produce evidence regarding small producers in their business records.

N/A

Q17 – Do respondents agree that the proposed treatment and above definitions for importers are appropriate? If not, please specify why.

N/A

Q18 – Do the current proposals adequately ensure that any wastage or spillage during the production process but before the product is bottled is not liable to the levy?

N/A

Q19 – We would be grateful if industry could provide examples of where soft drinks have become spoilt, spilt or unfit for use after the bottling process – together with quantities involved.

N/A

Q20 – Do respondents agree products which are given away free of charge should still be liable to the levy? If not, please provide examples of where relief may be appropriate and why.

Yes. This will ensure consistency of the public health message delivered by the levy and prevent these products from being promoted.

5. Excluding small operators

Q21 – What is an appropriate production or import level to define a small operator for the purposes of any exemption or relief? Please provide any evidence available on the broader market to support your claim. If you consider yourself to be a smaller producer or importer of added sugar soft drinks, please let us know how many litres of liable product by levy bands you produced, imported and/or exported in the last 12 months, to enable us to determine the appropriate level of any threshold.

N/A

Q22 – What is the best model for achieving the small operator policy intent - a production exemption for small operators or a small universal relief?

N/A

6. Treatment of imports and exports

Q23 – We would welcome information from industry on the UK demand and supply for imported soft drinks and views on how the levy could change this.

N/A

Q24 – Will the small importer exemption or the universal relief create a significant risk to the effectiveness of the levy? If yes please provide evidence and/or suggest possible legislative or operational countermeasures.

N/A

Q25 – Should added sugar soft drinks imported into the UK for consumption while travelling internationally be exempted from the levy, provided evidence is provided that the drinks have left the UK? If not, why?

These products should not be exempt from the levy for the following reasons:

- a) The companies importing such drinks to the UK are importers and, as stated on page 7 of this consultation, this policy detail is not within the scope of this consultation
- b) This will allow consistency of the public health message (applicable in the UK or anywhere in the world) that the sugary drinks levy delivers
- c) It is very likely that the majority of the clients of such transport companies will be British; the levy aims to protect the British population from the harmful effects of excess sugar consumption
- d) If such exemption was allowed, transport companies would have to define the proportion of each order of the drinks on domestic and international flights and figure out how much tax should be paid for every order. This would be an additional burden for the businesses.
- e) The disincentive of such a levy may influence efforts to get round the measure through internet sales and devices that could argue that a product was sourced from another country.

Q26 – Do respondents agree that the proposal to provide an export credit against future levy liability, restricted to direct exports by the producer, is the best overall solution? If not, please explain what solution you believe would work better.

N/A

Q27 – Do you make products that will be liable for the levy and will be exported? If you do not directly export these products can you provide information regarding the length of your supply chain, and how easily you could gather and provide proof of export to HMRC?

N/A

Q28 – What are the expected one-off and on-going costs for: obtaining and keeping evidence regarding the entitlement to a credit claiming the credit through the return.

N/A

Q29 – Do respondents agree that producers of soft drinks should include all of the drinks they produce, which are liable to the levy (UK market and exports) when determining their eligibility for relief as a small operator? If not, please provide evidence in support of your answer.

N/A

7. Registration and reporting

Q30 – Do you agree that these registration requirements are appropriate? If not, please specify why.

N/A

Q31 – Please provide details of the one-off costs for registering with HMRC. Q32 – Do you agree that these deregistration requirements are appropriate?

N/A

Q33 – In your view, will the reporting requirements be straight-forward to comply with? If not, why? If feasible, please provide information on how many product lines you produce by levy bands that will be liable for the levy.

N/A

Q34 – Please provide details of the expected one-off and on-going costs of completing, filing and paying the return.

N/A

Q35 – Are respondents aware of any other data sources that HMRC could rely upon to support compliance and/or reduce reporting requirements on businesses?

N/A

Q36 – Are there another other issues with the proposed registration and reporting requirements that you think we should know about?

N/A

8. Ensuring compliance

Q37 – If producers are required to test their products annually and record their findings, please provide details of any additional one-off or on-going costs (i.e. over and above those already incurred).

N/A

Q38 – Are there types of product testing that would help determine appropriate dilution ratios for dilutable products?

N/A

Q39 – Are there any sugar content tests that would be appropriate for imported drinks?

N/A

Q40 – Do respondents agree that the above proposals for compliance and penalties are appropriate?

Yes.

Q41 – Are our anti-abuse proposals sufficient to tackle the risk of fragmentation (abuse of the small operator exemption) from UK based soft drinks producers?

N/A

Q42 – What would compliance arrangements and support would businesses like to see?

N/A

Q43 – Do respondents have any other concerns or suggestions around potential compliance risks?

Obesity Action Scotland strongly welcome the introduction of the soft drinks industry levy. To ensure it has the greatest impact on population health it is vital that it is evaluated so that it can be refined and adjusted to continually deliver public health gains.

A rigorous, independent evaluation of the soft drinks levy should be undertaken. This should include analysis of consumer retail data (including products not included in the levy) and analysis of consumption trends.

The evaluation should gather information on

- Changes in the trends and sales of SSBs and products not included in the levy in order to understand consumer response and how these items have been substituted
- Industry action on reformulation as a result of the levy, product size changes, pricing strategies and marketing and promotional activities.
- Consumer attitudes and consumer behaviour in response to the levy including changes in consumption patterns

Evidence from other countries with similar taxes suggest that these types of taxes are most effective where there is a price differential at point of sale between products that are subject to the tax compared to those that are not. We would therefore suggest that close attention be paid to the pass through rate.

We would also request that consideration be given to a scaled volumetric tax, covering all free sugar, where the proportionate tax is scaled down on low sugar drinks and scaled up on high sugar drinks. In the current proposal there is no incentive for producers to reformulate towards the lower ends of the bands of 5 gram per 100 ml and 8 gram per 100ml.

9. Understanding commercial practices

Q44 – Unless already covered in your responses to other questions within this document, please tell us about how your business operates and how you think it would be impacted by the levy, including additional administrative burdens?

N/A

Q45 – Are there any specific impacts on small and micro businesses that are not covered? If so, please provide details of the anticipated one-off and on-going costs and burdens.

N/A

Q46 – Are there any specific impacts on importers that are not covered? If so, please provide details of the anticipated one-off and on-going costs and burdens.

N/A